

February 6 2023

Jerome Powell
Chair, Federal Reserve Board
Constitution Ave NW & 20th St NW
Washington, DC 20551

Re: Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions, Docket No. OP-1793

Chair Powell:

The Center for International Environmental Law (CIEL) is a nonprofit 501(c)(3) legal organization with offices in Washington DC, United States, and Geneva, Switzerland. Since 1989, CIEL has used the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. We appreciate the opportunity to provide feedback on the proposed Principles for Climate-Related Financial Risk Management for Large Financial Institutions ("Principles")¹, which rightly identifies climate risk as a threat to banks' safety and soundness and overall financial stability.

CIEL is one of many signatories to a letter submitted by Public Citizen on the urgent need to address the growing threat of climate greenwashing by banks while ensuring fair lending practices to low-income communities and communities of color, which are among those hardest hit by climate change.² We fully support the recommendations contained in the coalition letter and present this submission to highlight further opportunities to strengthen the draft Principles around the dangers of bank reliance on speculative technologies and ineffective offsets to meet net zero targets, and inadequacies in risk management processes, particularly in relation to climate litigation.

These Principles are an important starting point for ensuring better climate risk governance by banks, and serve to provide a level playing field for the banking sector. However, given the urgency of the climate crisis, with temperature rise already at 1.2°C and the increasing frequency and intensity of extreme weather events, it is imperative that this guidance, as amended, be quickly turned into legally enforceable rules in order to ensure the US banking sector is part of the climate solution. We urge the Board of Governors of the Federal Reserve

¹ The Board of Governors of the Federal Reserve System, [Principles for Climate-Related Financial Risk Management for Large Financial Institutions \[Draft\]](#) (December 8 2022)

² Public Citizen et al, [Re: Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions, Docket No. OP-1793](#) (February 6, 2023)

System (Board) to incorporate the recommendations below and in the coalition letter referenced above, and move quickly to adopt and implement the Principles as amended.

1) Clear disconnect between bank net zero commitments and financing practices necessitates enhanced reporting on interim targets and transition plans

While many large banks have made public commitments on achieving net zero by 2050, their financing practices remain largely at odds with these commitments. This is particularly evident in their continued financing of climate change drivers, most notably fossil fuel production and expansion, and simultaneous support for ineffective or speculative technologies and measures, such as carbon capture, utilization and storage (CCUS), so-called “blue hydrogen” (hydrogen produced from fossil gas using carbon capture), or offsets (collectively, “false climate solutions”).

Over 450 financial firms responsible for assets of over \$130 trillion have joined the Glasgow Financial Alliance for Net Zero (GFANZ), including 100 banks, representing 44% of global banking assets, that have joined the affiliated Net-Zero Banking Alliance (NZBA). As signatories to the NZBA, all six major Wall Street banks have publicly committed to “transition all operational and attributable GHG emissions from [their] lending and investment portfolios to align with pathways to net-zero by mid-century, or sooner...consistent with a maximum temperature rise of 1.5°C above pre-industrial levels by 2100.”³ Notably, this commitment includes their clients’ scope 3 emissions, and spells out an “expectation that governments will follow through on their own commitments to ensure that the objectives of the Paris Agreement are met.”

However, since the adoption of the Paris Agreement, the world’s 60 largest commercial and investment banks — aggregating their leading roles in lending and underwriting of debt and equity issuances — provided a total of \$4.6 trillion into fossil fuels from 2016–2021, with \$742 billion in fossil fuel financing in 2021 alone.⁴ Of this financing, 44 banks that had committed to net zero emissions by 2050 as of March 2022 provided \$145.9 billion in financing just in 2021 for the 100 companies doing the most to expand oil, gas, and coal globally. This includes \$13 billion to Saudi Aramco, \$11.6 billion to QatarEnergy, and \$10 billion to ExxonMobil.

Wall Street banks, in the order of JPMorgan Chase, Citigroup, Bank of America and Morgan Stanley, rank as the world’s top four largest bankers of fossil fuel expansion, despite their commitment to achieving net zero by 2050.⁵ Such financing undermines achievement of the 1.5°C goal of the Paris Agreement, based on the International Energy Agency (IEA) report which has concluded that further development of fossil fuels is at odds with a net-zero-by-2050

³ Net-Zero Banking Alliance, [Commitment Statement](#) (April 2021)

⁴ Rainforest Action Network, BankTrack, Indigenous Environmental Network, Reclaim Finance, Sierra Club, Oil Change International, Urgewald [Banking on Climate Chaos: Fossil Fuel Finance Report 2022](#) (March 2022)

⁵ *Id.* See also Reclaim Finance, [THROWING FUEL ON THE FIRE: GFANZ financing of fossil fuel expansion](#) (January 2023)

pathway.⁶ This conclusion was affirmed by the UN Secretary-General's High-Level Expert Group on Net-Zero Commitments of Non-State Actors, whose report launched in November 2022 unequivocally called for an end to fossil fuel financing in order to achieve net zero by 2050.⁷

In the absence of clear commitments to phase out the financing of fossil fuels, no less fossil fuel expansion, banks are increasingly relying on so-called climate solutions in their climate transition plans, namely by promoting CCUS, technological carbon dioxide removal (CDR), or carbon offset strategies.⁸ However, none of these has proven to be viable at scale, all entail significant financial costs and therefore risks, and all pose other social and environmental risks such as air pollution and displacement of local communities.

a) Net zero-aligned transition plans must not allow for fossil gas, speculative technologies or offsets that only mask continued fossil fuel financing.

With respect to transition plans, we are particularly concerned with increasing characterizations of “natural gas” – or, more accurately, “fossil gas” – as a transition asset,⁹ and the use of experimental or speculative emissions reduction and removal technologies that are unproven at scale, such as CCUS, in climate transition plans – often labeled as a so-called “climate solution.”¹⁰ The legitimacy of a net-zero transition plan is rooted in not only the speed and scale of action, but also the integrity and likelihood of success of those actions. New investments in gas or other fossil fuels on the assumption of effective CCUS will only lock-in carbon from additional fossil fuel supplies and run counter to what is required for achieving a global net-zero target. In order to ensure credible net-zero alignment, the Board should disapprove of reliance on technologies that are primarily speculative, particularly CCUS and technological CDR – such as bioenergy with CCS (BECCS) and direct air capture (DAC).

CCUS is a technology with a long history of overpromising and underperforming, (see Box 1 below), and its viability as a climate mitigation measure is consistently overstated. The recent IPCC Sixth Assessment Report (2022) made clear that “implementation of CCS currently faces technological, economic, institutional, ecological- environmental and socio-cultural barriers” such that “currently, global rates of CCS deployment are far below those in modeled pathways limiting global warming to 1.5°C or 2°C.”¹¹ Moreover, even where IPCC text or modeling refers to deployment of “abated” fossil fuels – that is, fossil fuels with CCS– “capture rates of new

⁶ International Energy Agency, [Net Zero by 2050](#) (May 2021)

⁷ United Nations, [Credibility and Accountability of Net-Zero Emissions Commitments of Non-State Entities](#) (accessed February 2 2023)

⁸ See, e.g. GFANZ, [Financial Institution Net-zero Transition Plans - Supplemental Information](#) (November 2022)

⁹ See, e.g., JPMorgan Chase, [2022 Climate Report](#) (December 2022), p2. (referencing liquefied natural gas as a low-carbon solution)

¹⁰ See GFANZ, *supra* note 8. See also SBTi, [Net Zero Standard for Financial Institutions](#).

¹¹ See IPCC, Working Group III Contribution to the IPCC Sixth Assessment Report on Mitigation of Climate Change [AR6 WGIII], Summary for Policymakers (SPM) C.4.6, SPM-37, available here: <https://www.ipcc.ch/report/ar6/wg3/>

installations with Carbon Capture and Storage (CCS) are assumed to be 90-95% +,¹² far above the performance of actual carbon capture systems in use.¹³

BECCS and DAC similarly remain primarily speculative, with financial cost, energy intensity, land use, and other input requirements putting sharp constraints on the ability of BECCS and DAC to meaningfully remove atmospheric carbon dioxide.¹⁴ DAC proposes to use large machines to pull ambient carbon dioxide out of the atmosphere for use or storage. BECCS purports to make the combustion of bioenergy emissions negative by capturing and storing the carbon dioxide produced through CCS. Both DAC and BECCS require large amounts of land, water, and energy to function as envisioned by proponents. This input intensity has potentially devastating consequences for food security, livelihoods, and health of those affected, as well as significant opportunity costs in terms of other beneficial ways in which the energy and resources could be used. As such, neither is viable at scale without threatening human rights, and both present challenges similar to CCUS—including challenges related to the carbon dioxide transport and storage dimensions of CCS, on which they depend. The unreliability of carbon removal technologies at the present time has also been recognized by courts.¹⁵

Offsets, which often involve land-based carbon sequestration, present various challenges in terms of quality assurance, effectiveness, and human rights impacts. Numerous studies have demonstrated the ineffectiveness of offsets to operate as intended, increasing emissions instead.¹⁶ More fundamentally, in perpetuating the notion that action to avoid or reduce emissions in one place can *substitute* for emissions cuts elsewhere rather than *complement* them, offsets delay action to curb emissions overall as required to achieve the 1.5°C goal of the Paris Agreement. Treating fossil fuel emissions as equivalent to forest uptake of carbon dioxide is flawed. The different pace of carbon cycles between fossil fuels and ecological carbon sinks means that projects marketed as offsets can at best only limit the increase of emissions in the atmosphere—which is frequently not the case—rather than reduce overall global emissions.¹⁷ Moreover, land-based sequestration projects are only impactful if “permanent”, which is increasingly uncertain due to the surge in forest fires. Financing offsets therefore fails to address the issues of financial instability associated with climate change, as it allows business-as-usual by climate drivers such as the fossil fuel industry to continue, despite the urgent need for a fossil fuel phaseout, while putting unsustainable pressure on a finite area of land and forests to serve as carbon sinks. This in turn threatens local communities, food production, and the world’s biodiversity and exacerbates legal and reputational risks.¹⁸

¹² AR6 WGIII, *supra* note 11, SPM, Footnote 37, SPM-20.

¹³ See Institute for Energy Economics and Financial Analysis, [The carbon capture crux: Lessons learned](#) (September 2022)

¹⁴ See, e.g., Chatham House, [BECCS Deployment](#) (October 2021); BBC, [The device that reverses CO2 emissions](#) (March 11 2021)

¹⁵ See, e.g., *Neubauer et al v Germany*, Federal Constitutional Court of Germany (29 April 2021) case no. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20 (English translation), Section 33 and Sections 226-227.

¹⁶ See, e.g., The Guardian, [Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless. analysis shows](#) (January 18 2023); CESifo, [Do Carbon Offsets Offset Carbon?](#) (October 2021)

¹⁷ See, e.g., Brink News, [Carbon Offsets Do Not Reduce Carbon Emissions. Only Delay Them](#) (March 7 2021)

¹⁸ See, e.g., Friends of the Earth International et al, [Chasing Carbon Unicorns: The Deception](#)

Banks are also increasing their financing of fossil-based blue hydrogen, liquefied natural gas or large-scale biomass as purported transition fuels or supposed “alternatives” to fossil fuels. Such categorization obscures the significant climate impact of these options.¹⁹

Net-zero transition plans that rely on CCUS and BECCS/DAC are therefore highly likely to fail, resulting in significant continued emissions beyond what an appropriate transition pathway would permit, and therefore exposure to significant climate-related financial risks. Bank tolerance for false climate solutions, including offsets, fossil gas, and blue hydrogen as a means to achieving their net-zero commitments prolongs the operation of the underlying emitting facilities and the production of fossil fuels, delaying their replacement and the necessary transition to renewable alternatives. Banks must therefore be fully transparent on their climate transition plans and explain whether and how they intend to rely on these false climate solutions to tackle the climate crisis and achieve their net-zero goal. In particular, banks should articulate and quantify the emissions impact and associated costs of any technologies and offset mechanisms used by the recipients of their financing, and disaggregate reporting on the amount of carbon emitted and reduced, carbon offsets, and GHG removals in their portfolios.

Box 1: Incompatibility of CCUS with Net Zero

CC(U)S has been touted for decades as a “climate solution,” but has consistently failed to meet its intended goals. Because of the very nature of CC(U)S—which is added onto an underlying polluting facility, such as a fossil fuel-fired power plant or factory, to keep that facility operating, purportedly with lower CO₂ emissions—no amount of investment in carbon capture can accelerate the transition away from fossil fuels. That alone should exclude CCUS from a net zero standard and transition plan. The technology’s failures to date, significant feasibility constraints, and relationship to the fossil fuel industry (as a source of carbon dioxide used in enhanced oil recovery) only strengthen the case for its exclusion. The IPCC in its latest report also identified CCS as among the highest cost measures with the lowest mitigation potential for reducing emissions by 2030, with its potential to achieve reductions far lower than wind and solar while costing substantially more.²⁰

CCUS is presented as an emissions reduction approach, but the reality is not so simple.²¹ The effectiveness of CCUS as an emissions reduction measure is highly dependent on its ability to achieve promised reduction rates (“capture rates”) and the permanence of the carbon

[Of Carbon Markets and “Net Zero”](#) (February 2021)

¹⁹ See, e.g., Global Witness, [Why ‘blue hydrogen’ is fossil fuel industry greenwash and won’t fix the climate](#) (Oct 28 2020); Sierra Club, [LNG Exports: A Bridge Too Far](#) (June 29 2021); Guardian, [Biomass is promoted as a carbon neutral fuel. But is burning wood a step in the wrong direction?](#) (Oct 5 2021)

²⁰ See WGIII AR6, *supra* note 11, Figure SPM.7, at SPM-50.

²¹ Center for International Environmental Law, [Confronting the Myth of Carbon-Free Fossil Fuels: Why Carbon Capture is not a Climate Solution](#) (July 2021). See generally, Center for International Environmental Law, [Carbon Capture and Storage](#), last visited February 6 2023.

storage. The carbon capture process also increases on-site energy consumption (the “energy penalty” associated with energy to power the capture process) as well as Scope 3 emissions both up- and downstream. Because CCUS technologies enable continued fossil fuel combustion, CCUS may extend the operation of underlying facilities, increasing lifetime emissions overall—a result at odds with the necessary phaseout of fossil fuels. CCUS projects have a long history of underperformance and cost overruns, despite promises and projections from project proponents (see below for examples). And after decades of investment and experimentation, CCS projects have failed to make a dent in global emissions; currently operating facilities have the capacity to reduce less than 1 percent of global CO₂ emissions (little more than 1/10th of 1 percent).²² For these reasons, the ability of CCUS to meaningfully contribute to climate goals should be understood as uncertain at best.

Carbon capture and compression processes are extremely energy-intensive, generating their own emissions on-site and increasing upstream emissions. Running carbon capture equipment incurs an “energy penalty” of 13-44%, typically around 20-30%, of the energy consumption of the underlying emitting process.²³ This energy penalty necessitates the combustion of additional fuel to achieve the same energy output, or a significantly diminished energy output if the amount of fuel used is held constant. CCUS therefore increases either or both the per-unit or absolute upstream (Scope 3) emissions from fossil fuel production, and can quite dramatically reduce any purported climate benefit. One study that calculated the lifecycle emissions associated with CCUS used for energy production from fossil fuels found that “the equipment captured the equivalent of only 10-11 percent of the emissions they produced, averaged over 20 years.”²⁴

In practice, CCUS projects have repeatedly failed to meet optimistic and ambitious CO₂ capture targets set by proponents.²⁵ In July 2021, Chevron, operator of Australia’s only commercial- scale CCUS project, admitted that the project failed to meet its five-year capture target of 80% CO₂, and is now seeking a deal with regulators on how to make up for millions of tons of CO₂ emitted.²⁶ Other high-profile projects, including Archer Daniel Midland’s Illinois Industrial Carbon Capture Project,²⁷ the Petra Nova,²⁸ and Boundary Dam²⁹ projects at

²² See Global CCS Institute, [Global Status of CCS 2022](#) (November 2022).

²³ AR6 WGIII, *supra* note 11, Ch. 6, at 6-38. See also Budinis, S. et al., [An assessment of CCUS costs, barriers and potential](#), 22 Energy Strategy Reviews, 61, 67-68 (2018) (discussing energy and efficiency penalty estimates for coal and gas).

²⁴ Taylor Kubota, [Stanford Study casts Doubt on Carbon Capture](#), Stanford News (October 25, 2019), citing Mark Z. Jacobson, [The health and climate impacts of carbon capture and direct air capture](#), 12 Energy Env’t. Sci. 3567 (2019).

²⁵ See U.S. Government Accountability Office, [Carbon Capture and Storage: Actions Needed to Improve DOE Management of Demonstration Projects](#) (2021).

²⁶ Michael Mazengarb, [Chevron admits failure of \\$3 billion CCS facility in Western Australia](#), IEFFA (July 19, 2021).

²⁷ See Jonathan Hettinger, [Despite hundreds of millions in tax dollars, ADM’s carbon capture program still hasn’t met promised goals](#), Midwest Center for Investigative Reporting (November 19, 2020).

²⁸ See Nichola Groom, [Problems plagued U.S. CO₂ capture project before shutdown: document](#), Reuters (Aug. 6, 2020).

²⁹ See Carlos Anchondo, [CCUS ‘red flag?’ World’s sole coal project hits snag](#), E&E News (January 10, 2022).

coal-fired power plants, and the Quest and Air Products capture projects at hydrogen plants,³⁰ have all missed capture targets advertised by proponents, have claimed high capture rates by only capturing a minute fraction of total facility emissions, or both.

Critically, the role of CCUS in providing carbon dioxide for enhanced oil recovery (EOR) – increasing oil production – further undermines any purported climate benefit of CCUS. More than 95% of all CCUS capacity deployed in the United States has been used for EOR, with only a single major project capturing carbon dioxide for geological storage.³¹

CCUS projects may also serve to extend the economic life of an underlying emitting source and therefore increase lifetime emissions even while reducing emissions intensity. Of the two coal plants with CCUS operations in North America, CCUS explicitly extended the life of one of them (and as discussed above, the other is no longer operating its carbon capture equipment). The Boundary Dam power station was planning to close, but instead was retrofitted with CCUS and is now expected to continue operating for several more decades.³² Similarly, a coal plant in North Dakota recently reversed its decision to retire and is pursuing a sale and CCS retrofit instead, and the state of Wyoming has mandated coal plants to install carbon capture equipment to stave off retirement.³³ Even though the total and per-unit energy emissions may be lower from the retrofitted facilities, the overall emissions are greater than what the plant would have emitted had it been shuttered (i.e., none).

CCUS projects also face significant feasibility risks, owing to the substantial costs³⁴ and land use footprint associated with CCUS infrastructure, and its serious environmental, public health, and safety risks.³⁵ One study estimates that to scale, the CCUS build-out—including the pipelines and infrastructure required to capture, compress, transport, and store CO₂—will need to be 2 to 4 times larger than the current global oil industry.³⁶ It is for these reasons that there is widespread and growing opposition to CCUS from community, environmental justice,

³⁰ See David Schlissel et al., *Institute for Energy Economics and Financial Analysis*, [Blue Hydrogen: Technology Challenges, Weak Commercial Prospects, and Not Green](#) (2022).

³¹ Global Carbon Capture and Storage Institute, [Global Status Update 2021](#) (2021), p.63.

³² Karin Rives, [Only still-operating carbon capture project battled technical issues in 2021](#), S&P Global (January 6, 2022).

³³ See Nicholas Kusnetz, [In a Bid to Save Its Coal Industry, Wyoming Has Become a Test Case for Carbon Capture, but Utilities are Balking at the Pricetag](#), InsideClimate News (May 29, 2020).

³⁴ See Hélène Pilorgé et al., [Cost Analysis of Carbon Capture and Sequestration of Process Emissions from the U.S. Industrial Sector](#), 54(12) *Env'tl. Sci. & Tech.* 7524-7532 (2020).

³⁵ Sandra Steingraber, [Carbon capture and storage fails to mitigate the dangers of fracking](#), in Concerned Health Professionals of New York and Physicians for Social Responsibility, *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure* (Eighth Edition, 2022). See also Beth Warden, [Government report on CO₂ pipeline leak in Mississippi could affect South Dakota Pipelines](#), Dakota News Now (June 11, 2022).

³⁶ N. Mac Dowell et al., [The role of CO₂ capture and utilization in mitigating climate change](#), 7 *Nature Climate Change* 243 (2017).

and other groups, which present additional obstacles to the use of CCUS. In fact, litigation to contest reliance on CCUS in corporate net zero plans has already begun.³⁷

b) Banks should prioritize and disclose short-term and medium term measures in their transition plans

Banks would also benefit from a requirement that companies disclose their short term (2~3 years) and medium term (2030) measures for aligning with the 1.5°C scenario in order to minimize financial instability.

As recently warned by the Intergovernmental Panel on Climate Change, the planet is likely to reach the crucial threshold of 1.5°C above pre-industrial levels by as early as 2030, precipitating the risk of extreme drought, wildfires, floods and food shortages for hundreds of millions of people.³⁸ Global mean temperatures are expected to continue to increase until net zero CO₂ emissions are reached, and therefore whether temperatures overshoot 1.5°C will depend on how quickly emissions are lowered. The IPCC makes clear that even temporary overshoot of 1.5°C will cause irreparable harm; even if global mean temperature rise could be reversed—and it is uncertain if it can be—many of the impacts of climate change, such as sea level rise, loss of ecosystem functionality, accelerated species extinction, and loss of glaciers for example may not be reversible for millenia, if ever.³⁹ The risk of overshoot of 1.5°C and the risk of irreversibility underscore the critical importance of near term measures to drastically reduce emissions and not rely on mechanisms that may incentivize delay.

2) Banks should enhance disclosure of climate impacts of its financing and exposure to climate litigation risk

a) Double Materiality approach to climate risk disclosure

Given the global nature of climate impacts, a bank should be required to also identify and account for the climate and human rights impacts of its financing, regardless of whether it affects the bank's financial condition or the environment in which it operates. This double materiality approach is reflected in the new Corporate Sustainability Reporting Directive (CSRD) adopted by the EU Parliament in November 2022, requiring companies to report on both sustainability factors affecting the company (financial materiality) and how the company impacts society and the environment (outward materiality). Double materiality disclosure can be

³⁷ Environmental Defenders Office, [World-first Federal Court case over Santos' 'clean energy' & net zero claims](#) (August 26, 2021).

³⁸ IPCC, [Climate Change 2021: The Physical Science Basis - Summary for Policymakers](#) (2021); IPCC, [Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels](#) (2018)

³⁹ Climate Analytics, [The science of temperature overshoots: Impacts, uncertainties and implications for near-term emissions reductions](#) (October 2021)

beneficial as either because environmental impacts could translate into financial risks, e.g. through legal liabilities or negative effects on a company's reputation, or because a 'reasonable person' might consider the information material for reasons other than direct financial repercussions.⁴⁰

b) Exposure to climate litigation risk should be specifically addressed

Climate change-related cases are on the rise, with over 1,000 cases having been brought to courts around the world in the last six years.⁴¹ Private sector actors, including financial actors, are increasingly being targeted. Already in 2015, then Governor of the Bank of England Mark Carney observed that the risks arising from such litigation are "significant, uncertain and non-linear" and "will only increase as the science and evidence of climate change hardens."⁴² In 2021 alone, a Netherlands court ruled that the oil and gas company Royal Dutch Shell has to cut its greenhouse gas emissions by 45% by 2030 to align its policies with the Paris Agreement,⁴³ and the first climate-related case was brought against a central bank, the National Bank of Belgium.⁴⁴ The former case is on appeal, while the latter case is pending. Litigation risk for commercial banks are also on the rise.⁴⁵

Owing to this trend, the Network for Greening the Financial System (NGFS) has recently identified climate-related litigation as a growing source of risk, and one that can have significant material impact on financial actors. Five potential impacts identified by the NGFS include: (1) successful litigation against a bank's client, resulting in fines and costs that affect the value of the firm, its creditworthiness and/or its financing costs; (2) cases against financial actors for failing to appropriately disclose and manage climate-related risks; (3) breach of contract claims relating to green financial products; (4) cases alleging breaches of fiduciary duties by the bank's directors for continuing to favor the financing of climate change drivers; and (5) cases against financial actors as "indirect polluters" for financing polluting projects. In addition, climate-related cases brought on the grounds of human rights violations are on the rise,⁴⁶ targeting both governments and corporations; banks could be impacted in ways similar to (1), (4) and (5) above from the perspective of human rights, particularly in light of their human rights responsibilities as articulated in the UN Guiding Principles on Business and Human Rights.

NGFS has recommended that "the risks associated with climate-related litigation vis-à-vis

⁴⁰ See, e.g. Matthias Täger, London School of Economics and Political Science, ['Double materiality': what is it and why does it matter?](#), (April 2021)

⁴¹ Setzer J and Higham C (2021) [Global trends in climate change litigation: 2021 snapshot](#). Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

⁴² [Breaking the Tragedy of the Horizon – climate change and financial stability](#), speech given by Mark Carney at Lloyd's of London (September 29 2015)

⁴³ [Milieudefensie et al. v. Royal Dutch Shell plc](#) (filed April 5 2019 with the Hague District Court)

⁴⁴ [ClientEarth v. Belgian National Bank](#) (filed April 13 2021 with the Brussels Court of First Instance)

⁴⁵ See, e.g., Reuters, [Banks face legal risks if they don't stick to climate goals](#), ECB says (September 22, 2022), Responsible Investor, [BNP Paribas threatened with climate litigation over fossil fuel financing](#) (October 28, 2022)

⁴⁶ For further analysis, see [Global trends in climate change litigation: 2021 snapshot](#), *supra* note 42.

financial and non-financial corporations should be taken into account in microprudential supervision and financial stability monitoring.⁴⁷ They note that this is because of the potential magnitude of the financial impact from these suits; wide scope of entities that can be affected, that the impact of climate-related litigation could materialize in a non-linear manner resulting in a surge of litigation; the increasing incorporation of climate commitments into laws and regulations; and the unique characteristics of climate change as a global risk.

Company transition plans are at the heart of current greenwashing activities, and a growing subject of litigation. Cases have been lodged against non-state entities for misrepresenting their climate commitments and transition plans to achieve net zero emissions. These include a case against TotalEnergies alleging that Total is violating European consumer law by promoting itself in advertisements as aiming to achieve carbon neutral by 2050 and play a major role in the transition while at the same time planning significant fossil fuel expansion, increasing production of gas, relying on carbon removal technologies—which remain unproven—and not taking meaningful action, in accordance with the best available science, to reduce emissions.⁴⁸ In the UK, claims of greenwashing were lodged against HSBC over their sustainability-focused advertisements, resulting in a ban on their use⁴⁹; HSBC subsequently pledged to stop funding new upstream oil and gas fields.⁵⁰ In Australia, the Australasian Centre for Corporate Responsibility (ACCR) has filed a lawsuit against Santos alleging that Santos is violating Australian consumer protection and corporation laws. The lawsuit alleges that Santos is engaging in misrepresentation by stating that it has a clear and credible plan to achieve net zero emissions by 2040, and by claiming that natural gas is a clean fuel that provides clean energy. Part of the basis for the lawsuit is that Santos, in fact, is planning to increase its greenhouse gas emissions by expanding its natural gas operations, and that more than 80% of its net zero plan relies on CCS and is based upon a range of undisclosed qualifications and assumptions about this process.⁵¹

Given this, the risk of climate-related litigation should be elevated in the Principles, and require financial institutions to be more explicit in how they are managing financial and operational risks resulting from potential litigation against themselves as well as against institutions to which they are exposed.

⁴⁷ Network for Greening the Financial System, [Climate-related litigation: Raising awareness about a growing source of risk](#) (November 2021)

⁴⁸ See Greenpeace France and others v. TotalEnergies SE and TotalEnergies Electricite et Gaz France, Summons before the Judicial Court of Paris, Mar. 2, 2022 (unofficial translation), <https://www.clientearth.org/latest/documents/assignation-greenpeace-friends-of-the-earth-france-and-note-affaire-a-to-us-against-totalenergies/>; ClientEarth, [We're Joining Legal Action against Total for Greenwashing](#) (Mar. 3, 2022); Amis de le Terre France, [Environmental Groups sue TotalEnergies for Misleading the Public over Net Zero](#) (Mar. 3, 2022).

⁴⁹ FT Advisor, [HSBC adverts banned after greenwashing complaints](#) (October 19, 2022)

⁵⁰ Reuters, [HSBC to stop funding new oil and gas fields as part of policy overhaul](#) (December 14, 2022)

⁵¹ Australasian Centre for Corporate Responsibility (ACCR), [ACCR files landmark case against Santos in Federal Court](#), Aug. 26, 2021; Environmental Defenders Office, [Australasian Centre for Corporate Responsibility expands landmark Federal Court case against Santos](#), August 25, 2022.

Thank you for your leadership and attention to this urgent issue. We look forward to continuing to engage in the formulation of further guidance to support the Board in producing a robust and comprehensive framework for climate-related risk management by banks. Should you have any questions on the content of this submission, please contact Nikki Reisch at nreisch@ciel.org.

Sincerely,

Nikki Reisch
Director, Climate & Energy Program
Center for International Environmental Law
(CIEL)

Hana Heineken
Senior Attorney
Center for International Environmental Law
(CIEL)